Executive Director Update

December 28, 2010

ATRS Board Legislative Package - 2011 Session

The 88th General Assembly convenes on January 10, 2011, at 12:00 Noon. This session is a general session of the Arkansas General Assembly. As part of the process of preparing for the 88th General Assembly, the ATRS Board has considered numerous potential changes to the retirement laws affecting ATRS members and employers.

The ATRS Board studied many ideas and potential proposals. Out of the extensive study, this legislative package was developed. This Executive Director Update will summarize the ATRS Board's legislative package for the 2011 General Assembly

Disability Retirement Requirements Strengthened. ATRS has looked at its disability law provisions. One weakness of the current law is that an ATRS member can leave their ATRS employer and may remain eligible for ATRS disability for up to 22 months later, even if the injury or illness begins after leaving employment at the ATRS employer. The ATRS Board proposal is that beginning July 1, 2011, the onset of the illness or accident must have occurred while the member was employed by an ATRS employer. This would apply to members who file an application for disability retirement on or after July 1, 2011. This would not affect current disability retirees or applicants that file a disability application before July 1, 2011.

Maximum Death Benefit after 15 Contributory Years, Regardless of Noncontributory Years.
Currently, all active or retired members with at least ten (10) years of actual service are eligible for a death benefit. Under current ATRS policy, a fully contributory member's beneficiary receives a $10,000 death benefit. A fully noncontributory member's beneficiary receives a $6,667 death benefit. ATRS has found examples where a member with only ten (10) contributory years had their beneficiary receive $10,000. A member with thirty-five (35) contributory years and one noncontributory year had their beneficiary receive less than $10,000. The proposal is that beginning July 1, 2011, if an active or retired member dies and has at least fifteen (15) contributory years of service credit, that member's lump sum death beneficiary will be entitled to receive the maximum amount of death benefits payable as determined by Board policy.

T-DROP Allow Partial Lump Sum Distributions. Under current law, a member must make one, all or nothing, decision on their T-DROP balance at the time of retirement. The entire balance may be left at ATRS and added into the member's monthly benefit (annuitized) or the entire balance may roll over to another retirement administrator. Beginning 7/1/2011, members retiring from T-DROP will have the option to take 25, 50, 75, or 100% of the distribution as a lump sum and use the remainder to add to the member's monthly benefit. ATRS will no longer have an all or nothing approach to T-DROP. If a member chooses 25, 50 or 75% option as a roll over, the balance of the T-DROP account may be annuitized and added to the member's monthly benefit. More decisions will be required, but the member will have better options available for their needs. T-DROP participants retiring on July 1, 2011, will have these options available if this proposal is enacted.

Contract Buy Out Service Credit Requires Members to Work on Site. Currently, a member may be bought out of their contract by an ATRS employer and continue to accrue salary and service credit after the buyout. There has been some concern due to the short vesting period of ATRS (five years) that some administrators have come to Arkansas and fulfilled a two or three year commitment and then had a buyout of their contract paid over two or three years to cover the vesting period necessary to participate in ATRS retirement benefits. This is costly to ATRS and creates fairness issues. The proposal is that beginning July 1, 2011, if a member is bought out or is being paid through a settlement, then that member must continue to perform services on site at the ATRS employer in order to get ATRS service credit or T-DROP deposits. This will not affect service credit already accrued in prior fiscal years.

Include National Guard Service from Other States and any Other Armed Forces Reserve in National Guard Service to be Purchased. Under the current law, ATRS only recognizes Arkansas National Guard service. ATRS does not recognize National Guard service from other states and does not recognize any military reserve service. This proposal would provide that any military reserve or National Guard service could be used to purchase ATRS service. Under current law, ATRS requires 5 years of National Guard service to purchase one year of ATRS service. The ATRS Board also proposes that ATRS allow National Guard/military reserve service on a year for year basis to bring it in line with the other Arkansas retirement systems such as APERS.

Do not use Salaries with eight or More Years' Gap in Anti Spiking Checking. ATRS has an anti-spiking law that takes the highest three salaries, and subject to certain conditions, limits the salaries to 120% from the lowest to highest. ATRS has found since the law has been implemented is that occasionally salary that was earned years before occasionally ends up being one of the high salaries. If an early salary is a high salary, it may materially lower the member's final average salary due to inflation rather than spiking. The proposal is that beginning July 1, 2011, if a member has 8 or more years' gap between any of the three highest years used in the final average salary, the anti-spiking formula will not be used between the old year and the next highest salary year in the calculation. This will not affect retirement calculations implemented before the law is effective.

College Legislation. Due to the conflicting provisions and uncertainty in the current laws that allow post secondary institutions (PSIs) like colleges to participate in ATRS, the ATRS Board has proposed revisions to the existing laws. According to the proposal, beginning July 1, 2011, all current ATRS members at PSIs are grandfathered as members of ATRS and will remain ATRS members during their employment. If the proposal becomes law, any new employees at PSIs desiring to participate in ATRS must: be vested members of ATRS already, a full time or benefits eligible employee at the PSI, not also working at another ATRS employer, and agree to remain as an ATRS member, even if they transfer to another PSI that is participating with ATRS. This proposal, if enacted, will not affect ATRS members who are current employees and already working at a PSI.

Extend Service Credit Requirements to 160 Days Per Year. The current ATRS service credit requirement provides that 120 days equals a year of service credit with 30 days equaling a ¼ year, 60 days equaling a ½ year, and 90 days equaling ¾ year. This has been the law since 1971. Based on a longer school year and a need to lower liabilities, ATRS has a proposal to lengthen the service requirement. This will not affect prior years or this school year (fiscal year). The ATRS proposal is that for all credit earned after July 1, 2011, a full year service year will require 160 days of service. In the proposal, 40 days would equal ¼ year of service, 80 days would equal ½ year of service, and 120 days would equal ¾ year of service. As a benefit to contributory members and ATRS employers, this proposal also has the contributory carry-forward feature for members who do not earn at least .25 year of service credit in a fiscal year. Days of service for contributory members without at least .25 service credit in a fiscal year will have service days carried forward into subsequent fiscal years until enough days are accumulated to establish at least .25 year in another fiscal year. The carry forward will become effective June 30, 2011, to benefit contributory members as soon as possible. This will prevent ATRS employers from being required to pay refunds back to the contributory members that do not earn at least a ¼ year of service credit. This has been an administratively difficult task for some ATRS employers in the past.

T-DROP Reciprocal Service Years Included in T-DROP Reduction. Under current law, a member's reciprocal service in another retirement plan like APERS does not reduce the T-DROP deposit to that member's account. This gives a member of another retirement system a special advantage over other ATRS members. Under the ATRS proposal, reciprocal service years in other state retirement systems will receive a 1% reduction in the T-DROP reduction formula. This proposal would place members with service in multiple systems on the same position as ATRS members entering T-DROP. Currently, an ATRS member with thirty (30) years of service split with fifteen (15) years in ATRS and fifteen (15) years in a reciprocal system receives an 85% deposit of what their ATRS retirement benefit would be, whereas an ATRS member with thirty (30) years of service, all in ATRS, receives only 70% of what their annuity would be. This proposed change implements a reduction on the reciprocal service that should be imposed to equalize the reciprocal service reduction with the ATRS service reduction. This proposal also has a cost savings.

Allow One Year for Members with Existing Purchase Accounts to Set Up Reasonable Purchase Plan. The auditors of ATRS have expressed concerns about the multiple service purchase accounts that appear to be inactive and unlikely to produce actual service purchases. In many instances, the amount owed by the member continues to increase with the member not making a payment to reduce the balance in several years. The ATRS proposal is to require every member with a service purchase account established before July 1, 2011, to establish a reasonable plan of action by June 30, 2012, to fund the service purchase. Plans that were previously established using ATRS employer withholdings are already designed to fully pay for service and would be automatically accepted as workable plans. Once a member has their plan of action in place, the failure to fund the plan as agreed would result in the plan being cancelled and refunds of the payments made as allowed by law. For the members who do not develop a reasonable purchase plan within the required time, the purchase account would be cancelled and the member would be refunded the money as allowed by law.

Use Actuarial Cost for Purchases of Service Credit. ATRS currently uses a purchase formula based on salary times required contribution times a compound interest rate to set the cost a member pays for the purchase of service. A similar formula is used on refund repayments. The actuaries for ATRS have determined that the formula only pays 45% of the actual value of the service being purchased. The other members of ATRS absorb the difference by the drain on the ATRS Trust Fund. The proposal by ATRS is for all purchases of all types to use the actuarial cost for the purchase of service credit and refunds. Members will be required to pay the cost in a lump sum. If enacted, this proposal would apply to all service purchases started on or after July 1, 2011. Members with a purchase account already in place will be allowed to complete their purchase under the old law. This proposal will provide a cost savings and eliminate a lot of administrative issues.

Marriage Qualification Requirements.
ATRS has found some loopholes and pitfalls in the ATRS law on marriage options. For instance, a significantly different set of rules apply to a member who marries one day before retirement and a member who marries one day after retirement. The law also invites potential “death bed marriages” and taking against ATRS' interest. The ATRS proposal is for the ATRS Board to establish marriage requirements by rulemaking to ensure flexibility and an effective method to protect ATRS in the process. The current law would remain in place until new rules are adopted. The authority to adopt rules would be effective upon passage, if the proposal were enacted. This proposal would not affect current options retirement elections of retirees and any changes would only apply prospectively.

Eliminate Rescission of Retirement.
ATRS law currently provides a retirement rescission election that may be used by qualifying retirees to end retirement and begin accruing additional service and salary that allows benefits to be recalculated. Rescission of retirement has only been used by members who have an opportunity to greatly enhance their benefits by eliminating early retirement penalties or by finding a new position at a greatly enhanced salary. Rescission of retirement is an accounting difficulty for ATRS staff and is only used by those who greatly benefit at the expense of the ATRS trust fund and other members. Eliminating rescission would be a cost savings and a benefit administratively. Under this proposal, those who are already working under a rescission agreement will be able to complete the terms of their agreement, according to law in place at the time they rescinded.

Termination Refunds or Survivor Spouse Refunds Cancel Noncontributory Years of Service Credit. Currently, if a member has mixed years of contributory and noncontributory service, and the member or surviving spouse withdraws the contributory portion, the noncontributory benefit is still paid to the member or surviving spouse if the noncontributory service is for 5 or more years. ATRS has obtained tax counsel advice that it is appropriate for ATRS to provide that if a member obtains a refund of the member's contributions, it cancels the entire service credit for the member. If a totally contributory member obtains a refund of their contributions, it already cancels all their service credit. Under this proposal, beginning July 1, 2011, new termination or death refunds will cancel all service credit, including noncontributory and free military service credit. Repayment of a refund will restore all service including the noncontributory years and free military service credit. This will not impact the noncontributory benefit of members who receive refunds before July 1, 2011.

Allow ATRS to Pay Reasonable Expenses to Cover Absence of an ATRS Trustee while on Official ATRS Business. Clarity is needed to allow ATRS to pay the cost of substitutes to ATRS employers to allow active ATRS Trustees to attend ATRS Board meetings without added costs. The proposal is that beginning July 1, 2011, the law will specifically allow ATRS to pay the cost of a substitute while a Trustee is attending an official Board meeting.

Allow Board to Appoint a Trustee to Fill an Unexpired Term. Currently, a vacancy on the ATRS Board is filled by an election. This may leave a vacancy of almost a year in a position. The proposal is that beginning July 1, 2011, upon a Board vacancy, the full Board of Trustees will be able to submit names for consideration of members who meet the qualifications of the vacated position. The Board will vote on the names submitted, the person appointed will serve only until the next regular election, the member elected in the election will serve out the balance of the original term.

Limit Membership Auditing to a Five-Year Look Back Period. Under the current ATRS law, if a mistake is found that is even thirty (30) or more years old, ATRS has a duty to correct that mistake. Often, this leads to unintended consequences and financial distress on employers and members. Recently, some ATRS employers have been asked to pay ATRS large sums of money that created a significant economic hardship on the school districts. At other times, members have been faced with large payments caused by a mistake that was due to accounting issues or reporting issues by employers or ATRS staff. The proposal is that beginning July 1, 2011, ATRS will only look back for five years (the current fiscal year and the prior 4 fiscal years) when auditing or reviewing a member or employer account for potential adjustment or recalculation. Absent intentional nondisclosure, fraud, misrepresentation or other wrongful act, ATRS can make no adjustments or changes on member or employer accounts after 5 years (current fiscal year plus the prior 4 fiscal years will be the definition of 5 years). This will prevent harm to members and employers. It will also prevent extensive administrative time spent tracking old issues and applying the law and policy that applied at that time. ATRS may make changes on member accounts that were in active review at the time this proposal becomes effective, if it is adopted.

Interest Accrual on Member Contributions Ceases One Fiscal Year after the Member's Death.
Certain survivors have learned that ATRS paid 6% compound interest on members' contribution accounts from the time they were open until the funds were withdrawn or benefits were paid in excess of the contributions. ATRS is aware of deceased nonvested members' surviving spouses not withdrawing the contributions because the interest rate that ATRS pays is greater than what could be earned if the funds were withdrawn. ATRS still pays 2% annually on those funds. This prevents ATRS from administratively closing member accounts and costs ATRS money. The proposal is that beginning July 1, 2011, any death refunds issued will be computed with interest that ceases at the end fiscal year of the member's death.

Add $75 Stipend to Spouse Annuity and Remove from Survivor Child's Annuity.
The current code inadvertently removed the $75 stipend in 2009 from any survivor annuity. By policy, ATRS has continued to pay the stipend to both the surviving spouse and each surviving child because that is what has happened historically. Because the 2009 session significantly increased the child annuity (each surviving child, up to three children, receive 20% each of the member's highest salary year), ATRS is proposing to remove the stipend from surviving children, but continue to pay it to the surviving spouse who is eligible for an Option A annuity when the deceased member would have been eligible for benefits. The proposal is to make this change apply for survivors of deceased members who die on or after July 1, 2011. This change would not affect the benefits of any spouse or child survivors of members who die on or before June 30, 2011.

T-DROP Deposit Eligibility.

Currently there is not a clearly defined law or policy on what makes a person eligible for continuing T-DROP deposits in certain circumstances. It is clear that if a T-DROP participant is terminated from employment, T-DROP deposits end the month in which that member's employment has terminated. What is less clear is what level of actual service to an ATRS employer is required for continuing T-DROP deposits. In order to bring uniformity the proposal is for the ATRS Board be given the authority to promulgate rules and regulations to determine how many days of service a part-time T-DROP member would have to work to be eligible to receive T-DROP deposits.